


RECORDING REQUESTED BY:

State of California
Department of Transportation
Tom Fellenz, Esq.
LEGAL - MS 57
P.O. Box 1438
Sacramento, California 95812-14389

WHEN RECORDED MAIL TO:

State of California
Dept Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826
Attention: James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup
Operations Branch


Sacramento County Recording
Craig A Kramer, Clerk/Recorder
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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

This Covenant and Agreement ("Covenant") is made by and between the State of California Department of Transportation (the "Covenantor"), the current owner of property located at 1921 Front Street, Sacramento, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land

of hazardous materials as defined in California Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property. The Property is bounded by the US Interstate 5, Q Street off-ramp on the northeast, Front Street to the West, and an industrial lot to the South. The Property is described in the attached Legal Description, Exhibit "A," attached hereto and incorporated herein by this reference. The Property is located within Section 2 of Township 8 North, Range 4 East relative to the Mount Diablo Base and Meridian.

1.02. Hazardous Substances Present. Hazardous substances, as defined in Health and Safety Code section 25316, remain on portions of the Property. The hazardous substances of concern are benzene, toluene, ethylbenzene, xylene, and a group of compounds known as polycyclic aromatic hydrocarbons which are present in the groundwater beneath the Property. These substances are also hazardous materials as defined in Health and Safety Code section 25260.

1.03. Remediation Plan. The Property is being remediated pursuant to a Remedial Action Plan (RAP) approved by the Department in May of 1991 and Remedial Action Order (RAO) HSA 93/94-002 for the I-5, Q Street Off-ramp Site issued by the Department dated August 16, 1993. Also associated with the RAO is a Final Groundwater Engineering Evaluation/Cost Analysis and Remedial Action Work Plan (EE/CA-RAW) approved by the Department on April 27, 2001. The RAO and the RAP require the recordation of a land use covenant on the Property. The remediation of the Property is being completed in coordination with the remediation of the Pacific Gas & Electric Company Sacramento Manufactured Gas Plant site, the City of Sacramento Housing and Redevelopment Agency site, and the Sacramento Municipal Utility District Front & T Street site (hereinafter referred to as the "Associated Sites").

1.04. Future Use Restrictions. The findings of the EE/CA-RAW were based upon a risk assessment for the site which assumed only industrial/commercial use of the Property as well as no extraction of groundwater for use as a drinking water source. This Covenant is necessary to preclude potential human exposure to hazardous substances which remain at the Property, to protect the remedial systems required for the Property and the Associated Sites, and to preclude extraction of groundwater for any purpose other than remediation.

1.05. Remedial Systems. As required by the RAP, contaminated soil was excavated to depths ranging from 10 to 19 feet below the ground surface. Contaminated soil was transported and disposed of at an authorized disposal facility. A geosynthetic clay liner was placed at the bottom of the excavation prior to backfilling. As required by the RAP, a Groundwater Extraction and Treatment System (GWETS) and a Soil Vapor Extraction and Treatment System (SVETS) were installed at the Property. The EE/CA-RAW concluded that the ongoing operation of the existing GWETS and SVETS would remedy the contamination by reducing concentrations of the hazardous substances of concern found in the groundwater. The GWETS includes various piezometers and monitoring wells that need to be maintained until the remedial goals are attained and no further monitoring is needed as determined by the Department. The SVETS includes various wells that need to be maintained until the remedial goals are attained and no further vapor extraction is necessary as determined by the Department. This Covenant is necessary to protect the remedial systems necessary to address the contamination at the Property and the Associated Sites.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor entities, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title or an ownership interest to all or any portion of the Property.

2.03. Occupant. "Occupant" means any Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction:

- (a) Runs with the land pursuant to Health and Safety Code section 25355.5 (a)(1)(C) and California Civil Code Section 1471;
- (b) Inures to the benefit of and passes with each and every portion of the Property;
- (c) Applies to and binds the successors in interest to the Property;
- (d) Is for the benefit of and enforceable by the Department; and
- (e) Is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25355.5 (a)(1)(C), the Restrictions herein shall be binding upon each Owner and Occupant, and shall continue as covenant running with the Property in perpetuity, except as otherwise provided in this instrument. Pursuant to Civil Code Section 1471, all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, the owner, lessor, assignor, or other transferor shall give the buyer, lessee, assignee, or other transferee notice that hazardous substances are located on or beneath the Property, as required by Health and Safety Code section 25359.7.

3.04. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). Such notice shall include the name and address of the new Owner. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent owners that pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner shall pay the Department's cost in administering the Covenant. Failure of the Owner to pay such costs when billed is a breach of the Covenant and enforceable pursuant to section 5.01 of the Covenant, such as costs incurred in conducting inspections of the Property and reviewing any document submitted pursuant to Sections 4.02, 4.03, 4.04, 6.01, 6.02 or 7.04.

3.07. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety or the environment.

3.08. Access for Implementing Operation and Maintenance. The entity or person(s) responsible for operating and maintaining the remedial systems for the Property and the Associated Sites, shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the Department determines that such activities are no longer required.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The use of the Property shall be restricted to industrial and commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) A long-term care facility for the elderly, handicapped, or infirm.

4.02. Prohibited Activities. The following activities are specifically prohibited, without prior written approval from the Department:

- (a) Activities that may disturb, alter, damage, or destroy the remedial systems required for the Property and the Associated Sites.
- (b) Activities that may interfere with the operation, maintenance or repair of the remedial systems required for the Property and the Associated Sites.
- (c) Extraction of groundwater for purposes or uses other than groundwater remediation.
- (d) Activities that may disturb soils that lie beneath the GCL placed at the bottom of the 1998 excavation (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining).
- (e) Activities that may disturb, alter, damage, or destroy the GCL placed at the bottom of the 1998 excavation.
- (f) The injection of any chemical, compound, or formulation into the soil or groundwater beneath the Property for purposes or uses other than groundwater remediation.

4.03. Soil Management. Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling below the GCL installed during the 1998 excavation, shall be managed in accordance with all applicable provisions of state and federal laws and shall not be removed from the Property without a Soil Management Plan approved by the Department.

4.04. Notification of Damage to Remedial Systems. The Owner or Occupant shall provide Notification to the Department of the type, cause, location and date of any damage to the remedial systems for the Property and the Associated Sites. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate Notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupants to comply with any of the requirements or Restrictions of this Covenant shall be grounds for the Department to require that the Covenantor, Owner or Occupant modify or remove, as the Department or determines appropriate, any non-conforming improvements ("Non-conforming improvements" may include but are not limited to buildings, roads, driveways, ponds, drainages, and paved parking areas) constructed or placed upon any portion of the Property in violation of the aforesaid Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. The Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application

shall be made in accordance with Health and Safety Code section 25233 or any successor provisions.

6.02. Termination. The Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234 or any successor provision.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sacramento within ten (10) business days of receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

California Department of Transportation
District 3, Right of Way
P.O. Box 911
Marysville, California 95901

Or to: Owners as identified to the Department under paragraph 3.05 of this Covenant.

To Department:

James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property and submit an annual report to the Department by January 15 of each calendar year. The annual report, filed under penalty of perjury by the then-current Owner, shall certify that the Property is being used in a manner consistent with this Covenant. The annual report shall describe how all the requirements outlined in this Covenant are being met. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection. It also shall describe how the observations were performed and the basis for the statements and conclusions in the annual report (e.g., drive by, walk in, etc.). If violations of this Covenant are noted by the observer, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten (10) days of identifying the violation; determine the identity of the

party in violation, send a letter advising the party of the violation of this Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of the Covenant shall be sent to the Department within 10 days of its original transmission.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.


7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"COVENANTOR"

RECOMMENDED FOR APPROVAL:

Date 6/13/06 By 
Walter Bird
Senior Right of Way Agent
North Region Real Property Services Branch
California Department of Transportation

Date 6/9/2006 By 
Douglas Coleman, P.E.
North Region Environmental Engineering Office
California Department of Transportation

APPROVED:

Date June 14, 2006 By Debbie H. Moreno
for
Lindy K. Lee
Chief North Region
Right of Way
California Department of Transportation

"DEPARTMENT"

Date July 6, 2006 By James L. Tjosvold
James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
Department of Toxic Substances Control

EXHIBIT A

That real property situated in the City of Sacramento, County of Sacramento, State of California described as follows:

DESCRIPTION OF ENVIRONMENTALLY RESTRICTED AREA (ON PARCELS 017126, 017100 and 017101)

A portion of Front Street, "T" Street, "S" Street, the Block bounded by "T", "U", Front and 2nd Streets, and Lots 1, 2, 3 and 4 of the Block bounded by "S", "T", Front and 2nd Streets all of the City of Sacramento per the official map thereof.

Said portion is that part thereof described as follows:

Beginning at a point in the westerly line of existing State Route 5 being the northerly terminus of course (3) as numbered and described in Director's Deed recorded August 9, 1967 in Book 67-08-09, Page 552, Official Records of Sacramento County; Thence from said point of beginning along said westerly line S 05° 17' 15" E 268.00 feet; Thence leaving said westerly line N 84° 42' 45" E 44.00 feet; Thence N 01° 53' 48" W 601.12 feet; Thence N 71° 34' 07" W 33.00 feet to a point in said westerly line; Thence along said westerly line S 13° 13' 28" W 126.00 feet; Thence along a tangent curve to the right with a radius of 2250.67 feet, through an angle of 05° 14' 39", and arc distance of 206.00 feet; Thence S 18° 28' 07" W 4.79 feet; Thence S 71° 32' 44" E 73.02 feet to the point of beginning.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento } ss.

On July 6, 2006, before me, Kathleen C. Duncan,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James L. Lissvold,
Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Kathleen C. Duncan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Dead Restriction

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Yuba

SS.

On 6/13/06,
Date

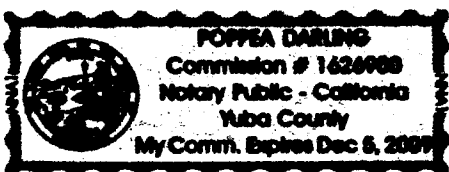
before me,

Poppa Darling, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Walker E Bird
Name(s) of Signer(s)

☒ personally known to me



☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Poppa Darling
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document: Deed Restriction

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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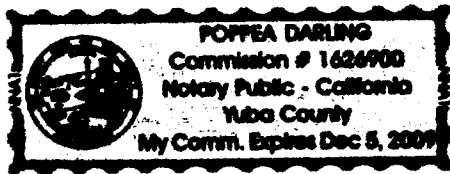
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Yuba } ss.

On 6/9/06, before me, Poppea Darling, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Douglass B. Coleman,
Name(s) of Signer(s)

☐ personally known to me



☒ I proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Poppea Darling
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Yuba

SS.

On

6/14/06

Date

before me,

Poppea Darling, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

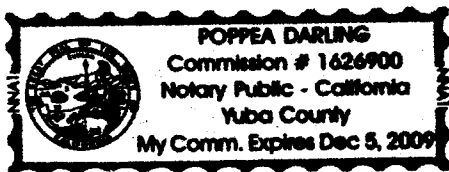
appeared

Debbie H. Moreno

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

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- ☐ Individual
☐ Corporate Officer — Title(s):
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☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

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☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
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